

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED

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CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY \_\_\_\_\_

ROBERT T. O'DONNELL AND  
WILLIAM K. BROWN  
Plaintiffs,

v.

GREG ABBOTT, ATTORNEY GENERAL  
FOR THE STATE OF TEXAS  
Defendant.

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CIVIL ACTION NO. A 03 CA 902 LY

**DEFENDANT'S SUPPLEMENTAL REPLY BRIEF**

TO THE HONORABLE LEE YEAKEL:

Pursuant to the Court's order requesting supplemental briefing on relevant legislation, Hon. Greg Abbott, Attorney General of Texas, defendant, respectfully submits the following, in reply to Plaintiffs' Supplemental Brief.

The plaintiffs argue in their supplemental brief at 4 that under new subsection (e) to TEX. FAM. CODE § 234.008, for the provisions of H.B. 1238 to become null and void, "the federal office would have to find that subsection (d) results in the OAG's failure to meet the requirements of both 42 U.S.C. sections 654a(e) and 654b." By the plaintiffs' reading, the Legislature is perfectly content to have the State suffer penalties (including loss of child support enforcement funding) so long as the Attorney General's Child Support Division fails to comply with only one section of the statute; only if the new provision causes the defendant to lose funding for noncompliance with *two* sections would the Legislature make it inoperative. *But see Smith v. City of Brownwood*, 161 S.W.3d 675, 678 (Tex. App. – Eastland 2005, no pet. his.) ("In construing a statute, courts will not attribute an intent to the legislature that leads to an absurd result if there is a more reasonable construction").

Assuming that the foregoing provision does not stand in the way of mootng the plaintiffs' claims for prospective relief, their lawsuit is not moot because they declare in their supplemental brief at 5 that they still seek the "recovery . . . of damages . . ." See *De La O v. Housing Authority of the City of El Paso, Tex.*, \_\_\_ F.3d \_\_\_, 2005 WL 1663940, \*3 (5<sup>th</sup> Cir. 2005) ("claim for damages . . . precludes a finding of mootness"); *Pederson v. La. State Univ.*, 213 F.3d 858, 874-75 (5<sup>th</sup> Cir. 2000) (citing *Henschen v. City of Houston*, 959 F.2d 584, 587 (5<sup>th</sup> Cir. 1992)).

The plaintiffs are not entitled to attorney fees for claims (if any) mooted by the legislation. *Bailey v. Mississippi*, 407 F.3d 684, 686-87 (5<sup>th</sup> Cir. 2005); *Johnson v. Rodriguez*, 260 F.3d 493, 494 (5<sup>th</sup> Cir. 2001).

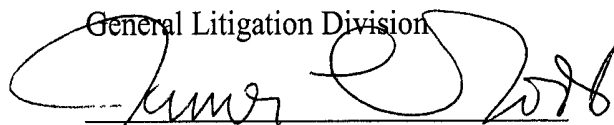
Respectfully submitted,

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General Litigation Division



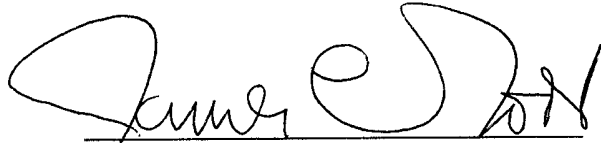
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ATTORNEYS FOR DEFENDANT

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been sent via U.S. mail on August 10, 2005, to:

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